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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/766,427 | 01/18/2001 | Linda Hockersmith | IMET0050 | 7093 |

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EXAMINER

GITOMER, RALPH J

ART UNIT PAPER NUMBER

1627

DATE MAILED: 05/22/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/766,427

Applicant(s)

Hockersmith

Examiner

Ralph Gitomer

Art Unit

1627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Jan 18, 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 3 6) ☐ Other: _____

The IDS received 11/23/01 has been received and claims 1-34 are currently pending in this application.

5 Claims 1-34 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Each of the following applies in all occurrences.

10 In claim 1 line 4, ~~the~~said shift~~the~~ lacks antecedent basis. Claim 1 is based upon a formula which is essentially meaningless because no units are presented. For example what would the index X be and how is it calculated? Claim 4 is meaningless which would make claim 5 equally meaningless because no units are seen
15 nor any possible meaning for the given range. Claim 6 is meaningless where glucose does not take excursions. In claim 7 ~~the~~said exemplary value of X~~the~~ lacks antecedent basis. Claim 8 ~~the~~individualingsaid~~the~~ may be a typo. Claim 12 is meaningless regarding how the model would be generated. There are many
20 instances of lack of antecedent basis in the claims. Claim 23 is entirely meaningless.

25 The claims succeed at once in being essentially meaningless and obvious at the same time. For example, the claims could read on simply eating a meal where one ordinarily stops eating when blood glucose levels approach a set level to calculating glyemic

index of foods and planning a diet based on these glycemic indexes to calculate glycemic load. This has been done by Barry Sears in his Zone books as well as the American Diabetes Association which suggests dietary restrictions for those with glycemic disorders. As presented, the claims cannot be properly searched and more searching and consideration may be required should the claims be amended in a meaningful fashion.

The Abstract of the Disclosure is objected to because it is two paragraphs. Correction is required. See M.P.E.P. § 608.01(b).

The following prior art pertinent to applicant's disclosure is made of record and not relied upon:

Brown (5,956,501) teaches diabetes management with equations.

Galen (5,695,949, and 6,027,692) teach monitoring diabetes.

Volpicelli (Clinical Physiology) teaches controlling blood glucose levels using equations.

Liszka-Hackzell (Computers and Biomedical Res) teaches predicting blood glucose levels with AI.

Belfiore (Front Diabetes) teaches oral glucose tests.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ralph Gitomer whose telephone number is (703) 308-0732. The examiner can normally be reached on Tuesday-Friday from 8:00 am - 5:00 pm.

5 The examiner can also be reached on alternate Mondays. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jyothsna Venkat can be reached on (703) 308-2439. The fax phone number for this Art Unit is (703) 308-4556. Any inquiry of a general nature or relating to the status

10 of this application should be directed to the Group receptionist whose telephone number is (703) 308-1235. For 24 hour access to patent application information 7 days per week, or for filing applications electronically, please visit our website at www.uspto.gov and click on the button Patent Electronic Business

15 Center for more information.

Ralph Gitomer

Ralph Gitomer
Primary Examiner
Group 1627

RALPH GITOMER
PRIMARY EXAMINER
GROUP 1200